Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
International Settlements Policy Reform	)	IB Docket No. 02-324
International Settlement Rates	)	IB Docket No. 96-261

COMMENTS OF AT&T CORP.

Mark C. Rosenblum
Lawrence J. Lafaro
James J. R. Talbot

One AT&T Way
Bedminster, New Jersey 07921
(908) 532-1847

Dated: January 14, 2003

TABLE OF CONTENTS

SUMMARY

The U.S. and global international telecommunications markets have become more competitive in recent years, and the Commission should accordingly reduce its existing regulation of the large majority of U.S. routes where U.S. carriers have negotiated rates in compliance with the *Benchmarks Order*. The success of the ISR arrangements already authorized on these routes demonstrates that commercial arrangements not subject to the International Settlements Policy requirements for nondiscriminatory rates, proportionate return and symmetrical settlement rates benefit U.S. consumers by encouraging lower termination rates and other efficiencies. The Commission should now further encourage such arrangements by removing those ISP requirements from U.S. international routes immediately once benchmark compliant rates are achieved.

As vividly demonstrated by current efforts to raise commercially-negotiated rates on some routes, however, Commission safeguards should still play an important role after ISP requirements for nondiscriminatory rates, proportionate return and symmetrical settlement rates are removed. Because of the continuing structural impediments to competition throughout the international market, with monopoly carriers still controlling the foreign end of three out of four U.S. international routes, ISP reform will simply result in higher U.S. consumer rates unless it is accompanied by continued Commission safeguards to prevent rate increases and whipsaws that would harm U.S. consumers.

The Commission's Public Notice issued on December 2, 2002 highlights the serious concerns raised by recent demands for major termination rate increases by foreign carriers or foreign governments in the Philippines, China, the Dominican Republic, and

elsewhere. Market forces alone will not enable U.S. carriers to resist such abuse of foreign market power, because market forces either do not exist in these countries or function very imperfectly. Existing Commission ISP safeguards, therefore, must remain in place after ISP requirements for nondiscriminatory rates, proportionate return and symmetrical settlement rates are removed. Most importantly, these safeguards should continue existing ISP prohibitions on rate increases and whipsaws, and should be enforced through carrier complaint. In particular, upon a petition by a U.S. carrier, the Commission should prohibit payment of non-cost-based increases in international termination rates on fixed or mobile networks as being contrary to its overall objective -- cost-based rates. The "No Special Concessions" rule should also continue on these routes.

Finally, new benchmarks are also now necessary, as envisaged by the *Benchmarks Order*, to "keep[] pace with cost reductions, and to encourage further movement toward cost-based settlement rates." The existing benchmarks are based on data that is now more than six years old, and are therefore much less effective than before in furthering the longstanding Commission policy of cost-based rates. Thus, subsequent to this proceeding, the Commission should commence a further proceeding to establish new benchmarks based on current data.

New benchmarks are particularly necessary to address high termination rates for U.S. international traffic terminated on mobile networks, including those in otherwise competitive countries, where mobile termination rates are as much as fifteen times higher than fixed termination rates. With increasing volumes of U.S. international traffic being terminated on foreign mobile networks, this rapidly escalating problem threatens to reverse much of the progress made in reducing foreign termination rates in recent years.

The Commission should not adopt alternative proposals included in the Notice to remove the ISP from all international routes and to introduce a "sunset" date for benchmarks. These proposals would remove key safeguards that prevent harm to U.S. competition from high termination rates and other abuses of foreign market power in noncompetitive countries with above-benchmark rates. Alternative termination methods are neither ubiquitous nor capable of handling large U.S. traffic volumes or, in the case of refile and reorigination, do not provide sufficiently low rates to allow U.S. carriers to resist the abuse of foreign market power in the absence of these Commission safeguards.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
International Settlements Policy Reform	)	IB Docket No. 02-324
International Settlement Rates	)	IB Docket No. 96-261

COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T") hereby submits its Comments concerning the Commission's proposals to reform the International Settlements Policy ("ISP") and settlement rate benchmark policies, and concerning recent foreign actions to raise international termination rates.[1]

I. FURTHER PROGRESS TOWARD COST-BASED RATES REQUIRES CONTINUING SAFEGUARDS AGAINST FOREIGN MARKET POWER.

International telecommunications markets are now more competitive than before, with more than thirty countries allowing full international competition, and more limited market-opening occurring in many other countries, largely as the result of the 1997 WTO Basic Telecommunications Agreement. At the same time, Commission policies requiring U.S. carriers to negotiate more cost-based international termination rates, and preventing foreign dominant

1 *Notice of Proposed Rulemaking*, IB Docket Nos. 02-324, 96-261 (rel. Oct. 11, 2002), FCC 02-285 ("Notice"); *Commission Extends Pleading Cycle In Rulemaking Proceeding On Possible Reform Of The International Settlements Policy In View Of Recent International Developments*, DA 02-3314, (rel. Dec. 2, 2002).

carriers from engaging in anticompetitive conduct to obstruct that goal, have limited the harmful effects of foreign monopoly power in the U.S. international market. Together, increased global competition and these Commission policies have greatly benefited U.S. consumers, with average U.S. international settlement rates falling from more than 70 cents in 1992 to 14 cents in 2002 (Notice, ¶ 18), and resulting, as the International Bureau has found, in "dramatically" lower U.S. consumer prices.[2]

In requesting comment on possible changes to these highly successful Commission policies, the Notice (¶ 27) first asks for information on the status of competition in the U.S. international market and on the continued existence of dangers of anticompetitive conduct. These dangers remain a major concern, because the substantial progress made in establishing full and effective competition in some countries has not removed foreign-end market access barriers even on the majority of U.S. international routes, or in most WTO Member countries. As described below, alternative termination methods remain subject to claims that they are unlawful, are neither ubiquitous nor capable of handling large U.S. traffic volumes or, in the case of refile and reorigination, do not provide sufficiently low rates, and therefore provide no substitute for international service competition in the foreign country.

U.S. consumers are adversely affected by these continuing barriers to competition, because U.S. carriers generally pay higher termination rates in non-liberalized countries than in competitive countries, as reflected by the disproportionate share of U.S. carrier payments made to non-liberalized countries. Moreover, as graphically demonstrated by recent

---

[2] *Atlantic Tele-network, Inc.*, IB Docket No. 96-261, Order, DA 01-2659 (rel. Nov. 16, 2001), ¶ 7.

demands by foreign carriers and governments for substantial rate increases on a number of U.S. international routes, where there is no effective competition at the foreign end, low rates can readily be raised to former high levels.

Therefore, while increased competition now allows further ISP reform to encourage greater reliance on market forces on benchmark-compliant routes, there are continued dangers of anticompetitive conduct in non-liberalized countries. These dangers require continued Commission safeguards -- including specific safeguards prohibiting price increases and whipsaws to apply following the removal of the specific requirements of the ISP on benchmark-compliant routes -- to prevent harm to U.S. competition. For the same reason, new lower benchmarks are also necessary on all routes to encourage the further reduction of foreign termination rates toward cost.[3]

1. The Commission's Anti-Whipsaw and Benchmarks Policies Were Established to Prevent Harm to U.S. Consumers Because of the Lack of Competition in Foreign Markets.

The Commission's ISP and benchmark settlement rate policies were established to prevent harm to U.S. consumers from foreign market power because of the absence of competition at the foreign end of all or most U.S. international routes. As described by the Notice (¶ 2), the purpose of the ISP is to ensure that monopoly and dominant carriers cannot use their control of the foreign end of U.S. international routes to extract concessions "by setting

[3] A further priority should be to encourage further global liberalization and, in particular, to obtain full telecommunications market access commitments from all non-liberalized WTO Member countries in the new WTO round of services negotiations.

competing U.S. carriers against one another."[4] Such anticompetitive behavior may take many forms, including blocking circuits or engaging in other retaliatory conduct against U.S. carriers that seek to negotiate lower termination rates.[5] As stated by the Notice (*id.*), "[t]he goal of the ISP is to address this asymmetry in market power." To prevent discrimination by foreign dominant carriers, the ISP requires U.S. carriers to maintain nondiscriminatory rates, proportionate return and symmetrical settlement rates in their arrangements with those carriers.

The ISP separately seeks to encourage "lower, more economically efficient, *cost-*

---

4 *See Implementation and Scope of the International Settlements Policy for Parallel International Communications Routes*, 3 FCC Rcd. 1614, n.1 (1988) (International Settlements Policy was developed to respond to the ability and incentive of foreign PTTs "to obtain unduly favorable terms and conditions in their relationships with multiple U.S. carriers to the detriment of U.S. carriers and ratepayers. The approach most commonly used has been the manipulation of multiple U.S. carriers against one another in a process known as 'whipsawing'."). *See also, Mackay Radio & Telegraph Co*., 2 FCC 592 (1936), *aff'd by the Commission en banc,* 4 FCC 150 (1937), *aff'd sub nom Mackay Radio & Telegraph Co. v. FCC*, 97 F. 2d 641 (D.C. Cir. 1938) ("to rely upon companies which are bitter competitors not to make concessions to the [foreign] administration which controls all outgoing radiotelegraph traffic is to provide an exceedingly tenuous basis upon which to rest public interest").

5 *See AT&T Corp., Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina*, 11 FCC Rcd. 18,014, ¶ 2 (Telintar's "unilateral[] block[ing of] AT&T's circuits to Argentina and USA Direct ® Service in retaliation for AT&T's efforts to negotiate a lower accounting rate . . . constitutes classic whipsawing and violates our International Settlements Policy"). This foreign carrier misconduct "[f]requently . . . takes the form of isolating a U.S. carrier in an effort to negotiate a favorable accounting rate agreement." *Sprint Communications Company, L.P.*, 13 FCC Rcd. 24,998, ¶ 9 (1998). *See also*, *Implementation and Scope of the Uniform Settlements Policy*, 51 Fed. Reg. 4736, ¶ 5 (1986) ("one carrier's acceptance of terms unfairly favorable to the PTT . . . creates substantial pressure on the other U.S. carriers to make identical concessions in order to retain or expand their business. Thus, the foreign PTT, through negotiation with a single U.S. entity and control over the routing of return traffic, may succeed in dictating terms to all U.S. carriers").

based international accounting rates."[6] The Commission determined in 1991 that the ISP should "also address the adverse effect of above-cost levels of international accounting rates on U.S. carriers and U.S. consumers."[7] The Commission emphasized that "international accounting rates should be cost-based," and directed "U.S. carriers to negotiate with their foreign correspondents accounting rates that are consistent with relevant cost trend[s]."[8]

The Commission accordingly encouraged "significant reductions in international accounting rates."[9] Moreover, the Commission also emphasized that it would deny any requested "non-cost-based increases in, or surcharges to, the accounting rate," unless these were shown to be in the public interest.[10] As the Commission has underscored on numerous occasions since then, its public interest goal is to achieve cost-based rates.[11]

---

6 *Regulation of International Accounting Rates*, 6 FCC Rcd. 3552, ¶ 3 (1991) (emphasis added).

7 *Id*., ¶ 2.

8 *Id*., ¶ 1.

9 *Id*., ¶ 9.

10 *Id*., ¶¶16 & n.30. *See also, id*., ¶ 19 (emphasizing that it would be "difficult for carriers to meet" this burden of proof). Thus, for example, the International Bureau emphasized in 1998 that the ISP requires a U.S. carrier to show that a proposed surcharge "is cost-based or that the surcharge is accompanied by a reduction in the accounting rate and results in a lower overall accounting rate" with the foreign carrier. *AT&T Corp., Petition for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with Haiti*, 13 FCC Rcd. 18,739, ¶ 5 (1998). *See also, e.g., RSL Com U.S.A.*, *Petition for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with the Dominican Republic,* 14 FCC Rcd. 1010, ¶ 4 (1999).

11 *See, e.g .,1998 Biennial Regulatory Review, Reform of the International Settlements Policy and Associated Filing Requirements,* 14 FCC Rcd. 7963, ¶ 9 (1999) (*ISP Reform Order*) (authorizing rejection of agreements not serving "the public interest in achieving cost-based rates"); *AT&T Corp., Petition for Waiver of the International Settlements Policy to Change*

(Footnote continued on next page)

To make further progress toward this objective, the Commission established settlement rate benchmarks in 1997, because it found there was not sufficient competition in foreign markets to reduce above-cost settlement rates to cost-based levels. The Commission explained that above-cost rates allow foreign monopolists "in effect [to] impose their monopoly pricing on [U.S.] customers," and also could "be used to finance strategies that create competitive distortions in the market for U.S. international services."[12]

Notably, the *Benchmarks Order* specifically rejected claims that new market forces stimulated by the WTO Basic Telecommunications Agreement would ensure that foreign termination rates were reduced to cost-based levels, because "effective competitive market conditions exist only in a few countries. Monopoly conditions prevail in most."[13] The Commission thus determined that it could not "rely entirely on the market to reduce settlement

(Footnote continued from previous page)

the Accounting Rate Arrangement for Switched Voice Service with Japan, 12 FCC Rcd. 18,287, ¶ 8 (1997) ("The Commission's longstanding goal for international settlement rates is cost-based rates because these rates promote economic efficiency and are the rates that would exist in a competitive market situation."); *International Settlement Rates*, 12 FCC Rcd. 19,806, ¶ 101, n.176 (1997) ("*Benchmarks Order*") ("We reiterate that our goal is ultimately to achieve settlement rates that are cost-based."); *Policy Statement on International Accounting Rate Reform*, 11 FCC Rcd. 3146, ¶ 10 (describing Commission actions in pursuit of "our goal of cost-based accounting rates").

12 *Benchmarks Order*, 12 FCC Rcd. 19,806, ¶¶ 2, 32, 216-31, 242. The Commission also found that above-cost settlement rates caused "particular problems for the United States as the largest and most competitive [telecommunications] market in the world," because traffic reoriginated through the U.S. attracted by its lower rates further increased the already large U.S. settlements deficit. *Id.*, ¶ 12. *See also, Sprint Communications Company, L.P.*, 13 FCC Rcd. 24,998, ¶ 5 ("The Commission has found that above-cost accounting rates are contrary to the public interest because (a) they contribute to artificially high calling prices and (b) they represent a subsidy from U.S. consumers to foreign carriers.").

13 *Id.*, 12 FCC Rcd. 19,824, ¶ 39.

rates on a timely basis to a more cost-based level."[14]

2. Continuing Foreign Market Access Barriers Generate Huge U.S. Consumer Subsidies to Non-Liberalized Countries.

Those core concerns are still highly relevant today. Most foreign countries still have not opened their international telecommunications markets. Only fifty of the 203 U.S.-international routes are listed by *TeleGeography* as having international telephone service competition.[15] Thus, more than three out of four U.S.-international routes are still under monopoly control at the foreign end. The International Bureau has found that an even smaller number of countries have made WTO commitments fully to open their markets. The most recent International Bureau *Report on International Telecommunications Markets* identifies only thirty WTO Member countries as "Signatories with Full Market Access Commitments Effective 2000."[16]

This International Bureau list does not consider whether these thirty most open countries have implemented or even ratified their commitments -- and the United States has a pending WTO Dispute Settlement Body complaint against one of these countries, Mexico,

---

[14] *Id.*, ¶¶ 39, 40. The Commission acknowledged that benchmarks were "still above cost," but found they would bring "significant reductions" and "place some discipline on a system of inflated settlement rates." *Id.*, ¶ 69. Thus, rates at competitive levels "would clearly be below the level of the benchmarks." *Id.*, ¶ 115.

[15] *TeleGeography 2002*, Fig. 3 (Countries with International Telephone Service Competition). Only forty of these countries are listed as having more than two international carriers.

[16] International Bureau, Federal Communications Commission, *Report on International Telecommunications Markets 2000 Update*, May 4, 2001, Att. 3 (Group A: Signatories with Full Market Access Commitments Effective 2000). The report also lists only 32 countries as having "made and implemented WTO commitments to liberalize facilities-based international service and to allow foreign entities to own a majority interest in facilities used to provide international voice and data service." *Id.*, at 3.

because of its failure to comply with its market-opening obligations.[17] Indeed, Gartner Dataquest, which uses a five step ranking system to evaluate the progress of each country's telecommunications liberalization, comprising Level 1 ("fully open to competition") and Level 2 ("in transition") through Level 5 ("Monopoly-dominated structure"), includes just twelve foreign countries in Levels 1 and 2 for 2001.[18] Further, the London *Financial Times* warns in a December 6, 2002 editorial that "competition has stalled in Europe's all-important domestic [telecom] market" and that "the local service market for incumbents hovers stubbornly at around 89 percent."[19] Similarly, in most countries the former incumbent continues to dominate the international services market. *TeleGeography* identifies only ten foreign countries where no international carrier has a market share above 50 percent.[20]

Consistent with Commission findings that competitive markets result in lower foreign termination rates,[21] more than one-half of total U.S. carrier settlements payments to foreign carriers, and almost two-thirds of the total U.S. settlements deficit, are made to the 173

---

17 *See* Letter dated Feb. 13, 2002 to H.E. Mr. Kare Bryn, Chairman, Dispute Settlement Body, World Trade Organization, from Ambassador Linnet F. Deily, Office of the United States Trade Representative, at 2, 3, 6 (Mexico's regulations governing international services are contrary to its WTO obligations because, among other things, they (1) "fail to ensure that Telmex provides interconnection to U.S. cross-border basic telecom suppliers on reasonable rates, terms and conditions;" (2) "fail to ensure U.S. basic telecom suppliers reasonable and non-discriminatory access to and use of public telecom networks and services;" and (3) "do not prevent Telmex from engaging in anti-competitive conduct.")

18 Gartner, *Worldwide Trends in Telecommunications Liberalization, 2002: Focus on the Emerging Opportunities*, Feb. 15, 2002, 3-5.

19 "Telecom train wreck," *Financial Times*, Dec. 6, 2002, at 14.

20 *TeleGeography 2002*, Market Shares of International Carriers.

21 *Benchmarks Order*, 12 FCC Rcd. 19,824, ¶¶ 41-42.

foreign countries that do not appear on the Bureau's list of countries with full market access commitments, although they are the destinations for only about one third of total U.S.-outbound traffic.[22] Thus, because of their higher termination rates and less competitive markets, less-liberalized countries receive the lion's share of U.S. consumer subsidy payments.

3. Alternative Termination Methods Will Not Prevent the Abuse of Market Power in Non-Competitive Markets.

Largely because of their very nature as "by-pass" activities that are frequently deemed unlawful at the foreign-end, alternative termination arrangements would not ensure the availability of sufficiently low rates or prevent competitive harm from the abuse of foreign

---

[22] *See* FCC 2000 Section 43.61 data, Table 1A (showing that the 173 countries not listed by the Bureau as having "full market access" commitments account for 34.5 percent of U.S.-outbound traffic, 56.7 percent of the total U.S. settlements payout, and 64 percent of the total U.S. net settlements payout). These 173 countries comprise the 52 countries listed by the Bureau as being "without full market access commitments effective 2000" in addition to the 120 other countries not mentioned in this Bureau analysis, all or virtually of which have closed international markets. A number of Eastern European countries are scheduled to open their markets in 2003, and several additional countries are scheduled to follow in later years. Additional telecommunications commitments may also result in the future from the new WTO services negotiations, and from bilateral Free Trade Agreements. However, governments that have resisted global liberalization to date may continue to do so, motivated by the desire to retain monopoly revenue streams or by dissatisfaction at the prospect of foreign investment or foreign control of national assets. In any event, where new commitments are made and implemented, effective competition will then take a further period to develop and to reduce the market power of the incumbent providers in these countries.

market power on closed-market routes. Alternate termination arrangements are not available to all countries, and typically cannot handle a significant percentage of U.S. calling to any country. Voice-Over-IP and IP Telephony over international routes also cannot handle large traffic volumes, and are receiving increasing scrutiny from foreign governments.[23]

The inadequacy of alternative termination methods as a means of ensuring that U.S. carriers obtain cost-based rates in foreign markets is demonstrated by the U.S.-Mexico route, which was the largest U.S. traffic route in 2000 with 5.5 billion minutes.[24] *TeleGeography* lists Mexico as among "the most attractive targets for carriers seeking to evade settlements payments,"[25] and Telmex has estimated that by-pass traffic reduced its international revenues by up to 18 percent in 2001.[26] By-pass activity on the U.S.-Mexico route also is assisted by Mexico's contiguous border with the United States. Nonetheless, Telmex continues to maintain international termination rates far above cost-based levels and more than 75 percent higher than the prices it charges Mexican carriers for the same network components and functions.[27]

---

[23] For example, the Panamanian government issued a decree on October 25, 2002, ordering ISPs to block 24 ports used for VoIP. Although this decree was subsequently rescinded by the Panamanian Supreme Court, it demonstrates the concern with which many foreign governments view this activity. According to *TeleGeography*, a subsidiary of Band-X Ltd., the operator of a "trading floor" for international wholesale minutes to many foreign destinations, so-called "gray market" rates "can fluctuate wildly, and abruptly disappear, when authorities discover and shut down that route." *TeleGeography 2002*, Overview of International Traffic Trends.

[24] *2000 Section 43.61 International Traffic Data Report*, Dec. 2001, Table A.1.

[25] *TeleGeography 2002*, Overview of International Traffic Trends.

[26] Telmex 2001 Annual Report, at 11, http://www.telmex.com/internos/inversionistas/finanzas/pdf/Annual01.pdf.

[27] *See Mexico-Measures Affecting Telecommunications Services*, First Written Submission of

(Footnote continued on next page)

Refile and reorigination arrangements (Notice, ¶ 22) do not by-pass the settlements system, but rather take advantage of any more favorable settlement rates negotiated by a carrier from a third-party country. While such rates are lower than those available on direct U.S. routes, they are still often far above cost-based levels. And, where a country's settlement rates are uniformly high, refile and reorigination arrangements with third party country carriers cannot provide greater reductions. Similarly, refile and reorigination arrangements cannot avoid foreign-end surcharges or rate floors imposed on all inbound international calls.

Thus, although alternative methods of termination are now more widely used than before, they are neither ubiquitous, nor capable of handling large U.S. traffic volumes, or in the case of refile and reorigination, do not provide sufficiently low termination rates. Accordingly, there is no basis to find that the "increase in least-cost routing mechanisms and innovative services" (Notice, ¶ 23) provides sufficient termination options in non-liberalized markets to prevent competitive harm to the competitive U.S. market from the abuse of foreign market power on these routes.

II. THE SPECIFIC REQUIREMENTS OF THE ISP SHOULD BE REMOVED ON BENCHMARK COMPLIANT ROUTES.

AT&T believes that pro-competitive developments in the U.S. international markets since the Commission last examined reform of the ISP in 1999 now support additional reforms in Commission rules. (*See* Notice, ¶ 1.) In particular, the low rates achieved by U.S. carriers' ISR arrangements on many benchmark-compliant international routes show that

(Footnote continued from previous page)

the United States of America, Oct 3, 2002, WT/DS2204, at 4, http://www.ustr.gov/enforcement/2002-10-03-mextelecom-first.pdf.

commercial arrangements that are not subject to the specific requirements of the ISP for nondiscriminatory rates, proportionate return and symmetrical settlement rates benefit U.S. consumers by encouraging termination rates that are often far below benchmark levels. The success of these commercial arrangements demonstrates that the specific requirements of the ISP for nondiscriminatory rates, proportionate return and symmetrical settlement rates should now be removed completely from all benchmark-compliant routes. The Commission should also ensure a rapid transition to commercial arrangements on these routes once benchmark-compliance is achieved.

Recent foreign carrier and foreign government demands for higher rates on benchmark-compliant ISR routes nonetheless vividly demonstrate that safeguards will remain necessary to prevent the abuse of foreign market power after removal of the specific requirements of the ISP. These necessary safeguards are discussed in Section III below.

The alternative proposal to remove the ISP on ISR-approved routes should not be adopted because it would needlessly prevent commercial arrangements with non-WTO Member countries. Further, continuation of the present inefficient and burdensome ISR authorization process would obstruct U.S. carriers' timely access to commercial arrangements. As discussed in Section IV below, the other alternative proposal, to remove the ISP from all U.S. international routes irrespective of whether benchmarks are achieved, would encourage discriminatory conduct by monopoly carriers with above-benchmark rates and greatly reduce U.S. carriers' ability to negotiate rates with those carriers in compliance with the *Benchmarks Order*.

1. <u>Benchmark Rates Should Trigger the Removal of the ISP.</u>

Five years after the *Benchmarks Order* first authorized U.S. carriers to seek ISR authority on routes with benchmark rates, ISR arrangements are now authorized on more than eighty U.S. international routes.[28] As described by the Notice (¶¶ 8, 24), ISR arrangements, which are exempt from the specific requirements of the ISP, have brought lower termination rates and greater efficiencies that have benefited U.S. consumers. The Commission should now further encourage these commercial arrangements on benchmark-compliant routes by removing the specific requirements of the ISP for nondiscriminatory rates, proportionate return and symmetrical settlement rates immediately benchmark rates are achieved by any U.S. carrier.

In removing these specific requirements of the ISP, the Commission should make clear that it expects foreign termination rates to be further reduced below benchmark levels toward the public interest goal of cost-based rates as the result of commercial arrangements on these routes. Furthermore, to promote the public interest in cost-based rates and to prevent competitive harm, other important ISP requirements should continue on these routes.

Specifically, because significant harm to U.S. competition may still occur from rate increases and whipsaws on routes where rates are below benchmarks, existing Commission ISP safeguards prohibiting this misconduct should remain in effect after other ISP rules are removed. As described in Section III below, these safeguards against rate increases and whipsaws are necessary to ensure that U.S. carriers can obtain the full benefit of competitive market forces by entering into commercial arrangements on these routes and by resisting any attempted abuse of foreign market power.

2. The Commission Should Encourage a Rapid Transition to Commercial Arrangements Once Benchmark-Compliance is Achieved.

Although ISR is already available at benchmark rates, U.S. carriers are presently subject to unnecessary delay in adopting commercial arrangements on benchmark-compliant routes because an ISR applicant must demonstrate that settlement rates for at least 50 percent of settled traffic on the route are at or below benchmark rates.[29] AT&T's ISR approvals have been subject to numerous unnecessary delays, frequently for more than one year, and sometimes for much longer, when it has relied on benchmark rates filed by other U.S. carriers to make this demonstration.[30]

These delays needlessly postpone the consumer benefits of lower cost commercial agreements, and frequently cause further inefficiencies. For example, they require AT&T to renegotiate benchmarks agreements with foreign carriers because often AT&T must wait so long for other U.S. carriers to file benchmark rates that its original agreements with foreign carriers expire.[31]

The Commission should avoid continuing these same delays and inefficiencies in removing the ISP from benchmark-compliant routes. To ensure that U.S. consumers receive

---

(Footnote continued from previous page)

[28] *Benchmarks Order*, 12 FCC Rcd 19,806, ¶243 (1997); Notice (¶ 34).

[29] 47 C.F.R. Section 63.16(b)(1).

[30] *See AT&T Petition for Waiver of section 63.16 of the Commission's Rules, 47 U.S.C. Section 63.16, to Provide Switched Services Via International Private Lines Interconnected to the Public Switched Network at One or Both Ends between the United States and Dijbouti, Indonesia, Latvia, Uganda and Tanzania*, Sept. 16, 2002.

[31] *Id.*

the

benefits of U.S. carriers' commercial arrangements as quickly as possible, the Commission should remove the specific requirements of the ISP for nondiscriminatory rates, proportionate return and symmetrical settlement rates when any U.S. carrier files a benchmark-compliant rate negotiated with the dominant carrier.[32] At that point, these ISP requirements should be removed from all traffic on the route, and all U.S. carriers should be allowed immediately to adopt commercial arrangements.

3. Section 43.51 and 64.1001 Filing Requirements Should Be Removed With Specific ISP Requirements.

All related filing requirements under Sections 43.51 and 64.1001 should also be lifted when the specific requirements of the ISP for nondiscriminatory rates, proportionate return and symmetrical settlement rates are removed. As the Commission has found, the public disclosure of commercial arrangements "may have a chilling effect" on market forces.[33] There is also no reason to require the confidential filing of rates and contracts to prevent the abuse of foreign market power. Under the carrier-initiated enforcement procedures described below, U.S. carriers would provide this information in support of their enforcement requests. Continued Commission monitoring of these routes should rather be based on quarterly 43.61 traffic and revenue reports.

4. The Same Threshold for Removal of the ISP Should Apply to WTO and Non-WTO

---

32 A significant drawback to the proposal to remove the ISP only on ISR-approved routes (Notice, ¶ 34), therefore, would be any continuation of the inefficient and burdensome ISR authorization process. As described above, the Commission should ensure that U.S. carriers are not subject to unreasonable delay in their access to commercial arrangements once a route is benchmark-compliant. Removal of the ISP only on ISR-authorized routes would also effectively preclude commercial arrangements with non-WTO Member countries, as described below, although U.S. consumers already have derived significant benefits from such arrangements.

33 *See ISP Reform Order*, 14 FCC Rcd. 7963, ¶ 69.

Member Countries.

Both WTO and non-WTO Member countries were made subject to the same 25 percent below benchmark threshold for the removal of the ISP in 1999, and the new proposed standard for the removal of the ISP of benchmark-compliance should also apply to both groups of countries. Pursuant to these existing rules, U.S. carriers entered into commercial arrangements with Saudi Arabia before it became a WTO Member country, and U.S. consumers would obtain similar benefits from U.S. carrier arrangements with other non-WTO Member countries in the future where a U.S. carrier first obtains a benchmark-compliant rate.[34]

Contrary to this approach, the alternative proposal to remove the ISP only on ISR-approved routes (Notice, ¶ 34) would effectively preclude commercial arrangements with non-WTO Member countries because it would require these countries to "additionally satisfy the 'equivalency' analysis" before the ISP was removed. This would be a higher standard than now applies for the removal of the ISP on non-WTO Member country routes, because present rules do not require these countries to satisfy the equivalency test.[35] It would also be a standard that few non-WTO Member countries could meet because of their non-competitive markets. Provided continued Commission safeguards prevent harm to U.S. competition on non-competitive benchmark-compliant routes, there is no reason to deny U.S. consumers the lower rates that may result from commercial arrangements with carriers in non-WTO Member countries.

---

[34] *See id.*, ¶ 58 ("[W]e . . . find that it is unlikely that restricting this policy only to WTO members countries would encourage foreign countries to join the WTO.").

[35] *ISP Reform Order*, 14 FCC Rcd. 7963, ¶ 58.

III. CONTINUED SAFEGUARDS ARE NECESSARY TO PREVENT HARM TO THE U.S. MARKET FROM FOREIGN RATE INCREASES ON BENCHMARK-COMPLIANT ROUTES.

Recent efforts by foreign carriers and governments to raise rates on various benchmark-compliant routes highlight the importance of continuing existing safeguards to prevent harm to U.S. competition on these routes after the removal of ISP requirements for nondiscriminatory rates, proportionate return and symmetrical settlement rates. Benchmarks "are still considerably above actual cost-based rates" (Notice, ¶ 44), and the Commission rightly expects that "settlement rates on routes where there is effective competition will move toward cost-based levels."[36] However, the eighty-two benchmark-compliant routes now authorized for ISR, and from which the ISP would be removed under all three alternative proposals set forth in the Notice, include many routes where there is no effective competition at the foreign-end.[37] Many more non-competitive countries are among the additional seventy-five countries that are also now benchmark-compliant and that are also therefore eligible for ISR and, potentially, the removal of the ISP.

U.S. carriers have obtained below-benchmark rates thorough commercial arrangements with carriers in many non-competitive ISR-approved markets, as demonstrated by the 9-cent average U.S. international ISR rate for 2001 cited by the Notice (¶ 24). But even where rates have been reduced far below benchmarks, where there is no effective competition at

---

36 *Benchmarks Order*, 12 FCC Rcd. 19,806, ¶ 14.

37 *Compare*, International Bureau, *ISR-Approved Countries*, http://www.fcc.gov/ib/pd/pf/isr.html, *with* International Bureau, *Report on International Telecommunications Markets 2000 Update*, May 4, 2001, Att. 3 (Group A: Signatories with Full Market Access Commitments Effective 2000).

the foreign-end, U.S. carriers still remain vulnerable to efforts by the dominant foreign carrier or the foreign government to reverse this progress in order to receive higher U.S. consumer subsidies.

For these reasons, after ISP requirements for nondiscriminatory rates, proportionate return and symmetrical settlement rates are removed from a benchmark-compliant route, the Commission should maintain existing ISP safeguards against rate increases and whipsaws, and enforce these safeguards through a carrier-initiated complaint process. Additionally, the "No Special Concessions" rule should continue on all routes, and quarterly 43.61 traffic and revenue reporting should also continue.

1. Attempted Foreign Rate Increases Demonstrate the Necessity for Continued Safeguards After Removal of the ISP.

Under effective competition, termination rates for international calls should be little different from interconnection rates for domestic calls, and rates are now moving toward that level on some ISR routes. Commercial ISR arrangements, therefore, have successfully lowered termination rates in many foreign markets, including in many noncompetitive ISR markets. In recent months, however, a growing number of dominant foreign carriers and foreign governments have sought to recapture lost U.S. subsidies by increasing rates on ISR routes.

Most recently, PLDT, the dominant carrier and former monopolist in the Philippines, informed AT&T that international termination rates will be increased by 50 percent from February 1, 2003. Three of PLDT's competitors in the Philippines have informed AT&T that they will also be charging the same increased rate from the same date.

Also recently, China has announced a minimum 17-cent per minute international termination rate with its international carriers, after also requesting a 40 percent increase in rates for country-direct services. U.S. carrier rates to China have been as low as 2 cents.[38]

Similarly, earlier this year, the Dominican Republic regulator, INDOTEL, announced a minimum international termination charge of 8-cent per minute, approximately 50 per cent higher than present commercially-negotiated rates, to address the "decrease that has occurred in the flow of foreign currency to the Dominican Republic as the consequence of the drastic reduction of termination price of the international calls to our country."[39] In Jamaica, the regulator is seeking to impose a 7-cent so-called "access deficit" surcharge on all international inbound minutes terminated on the network of the dominant incumbent, C&W Jamaica.[40]

Other dominant carriers at the foreign end of other ISR routes, particularly in non-competitive markets, are also demanding increased rates from U.S. carriers. In Venezuela, CANTV has requested a twenty per cent increase in country direct rates. In the Netherlands Antilles, Antelecom has refused to negotiate lower rates and has indicated that the government will soon mandate higher rates. Similarly, AT&T understands that in Ecuador the government is threatening to establish a rate floor that would be higher than current rates. Even in Spain, which is a more competitive market, Telefonica de Espana, the dominant carrier, is demanding increases in country-direct service rates of more than seventy-five per cent.

Moreover, in noncompetitive ISR markets, U.S. carriers have little ability to resist

---

38 *See Communications Daily,* Nov.25, 2002, at 2 (China rate "had been closer to 2-4 cents").

39 *See* INDOTEL Resolution No. 043-02, Jun. 21, 2002, page 1. *See also*, INDOTEL Resolution No. 084-02, Sep. 30, 2002.

40 *See Modifications to C&WJ's Price Cap Plan and Proposed Rules for International Telecommunication Services, Consultative Document*, Aug. 31, 2002, Office of Utilities Regulation, Jamaica, Chap. 3 (Access Deficit Charges), available at www.our.org.jm.

such demands. If there is no other international carrier at the foreign end, or no such carrier with sufficient capacity, or the foreign government establishes a rate floor for all inbound international calls, U.S. carriers cannot respond to such conduct by sending their traffic to another carrier. And in all foreign markets, U.S. carriers cannot readily make alternative arrangements for country-direct and international 800 services, because these services are linked to advertised 800 or free-phone numbers at the foreign-end and number portability for these services is rarely available. Continued safeguards, therefore, are necessary after removal of the ISP requirements for nondiscriminatory rates, proportionate return and symmetrical settlement rates on a route, to prevent harm to U.S. competition from the potential abuse of foreign market power.

2. Safeguards Against Rate Increases and Circuit or Service Disruptions Should Be Enforced Through Carrier Complaint.

The Commission should address these concerns after other aspects of the ISP are withdrawn on a route by maintaining ISP prohibitions on rate increases and refusals to deal by foreign carriers. As described above, the ISP requires the reduction of international termination rates toward more cost-based levels, and has long prohibited U.S. carriers from paying non-cost-based increases or surcharges except where these are shown to be in the public interest. Similarly, the Commission has condemned the unilateral blocking of U.S. carrier circuits in retaliation for efforts to negotiate lower rates as "classic whipsawing."[41]

Similar safeguards should continue where the other elements of the ISP are otherwise removed, to allow U.S. carriers to resist unjustified foreign-end rate increases and

---

41 *AT&T Corp., Proposed Extension of Accounting Rate Agreement for Switched Voice Service*

(Footnote continued on next page)

circuit or service disruptions in the future.[42] As demonstrated by current efforts to obtain unjustified rate increases, after the specific ISP requirements for nondiscriminatory rates, proportionate return and symmetrical settlement rates are removed from benchmark-complaint routes, the longstanding ISP prohibitions on whipsaws and unjustified foreign-end rate increases will remain necessary to promote the public interest in cost-based rates and the prevention of competitive harm to the U.S. market.[43]

In furtherance of the Commission's desire to limit unnecessary regulation, and to encourage market-based solutions wherever possible, these continued safeguards should be applied through a carrier-initiated enforcement process, similar to procedures for the enforcement of benchmark settlement rates.[44] Specifically, the safeguard against unjustified rate increases should allow any U.S. carrier to ask the Commission to prohibit payment to a dominant foreign carrier of an increased foreign termination rate for a U.S.-outbound service, including

(Footnote continued from previous page)

with Argentina, 11 FCC Rcd. 18,014, ¶ 2 (1996).

42 Although such safeguards are less likely to be required on fully competitive routes, they should apply to all routes on which the specific ISP requirements for nondiscriminatory rates, proportionate return and symmetrical settlement rates are removed. Since the Commission removed the ECO and equivalency tests from routes to WTO Member countries following the WTO Basic Telecommunications Agreement, it has applied the same regulation to all WTO Member country routes and it should continue that practice here. *Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd. 23,891, ¶¶ 29, 76 (1997).

43 These safeguards, and their continued application, are amply supported by the Commission's broad authority to regulate the U.S. international telecommunications market to promote the public interest. *See Cable & Wireless P.L.C. v. FCC,* 166 F. 3d 1224 (D.C. Cir. 1999); *Atlantic Tele-Network, Inc*. v. FCC, 59 F. 3d 1384 (D.C. Cir. 1995).

44 *See Benchmarks Order*, 12 FCC Rcd 19,806, ¶186.

country-direct and international 800 services.[45]

Similarly, U.S. carriers should be able to request immediate Commission action to address anticompetitive conduct by dominant foreign carriers cutting off access to circuits or services at the foreign end. The Commission would then take whatever action it found necessary to promote the public interest, which could include re-imposing all the requirements of the ISP, as suggested by the Notice (¶ 37).

3. The "No Special Concessions" Rule and Quarterly Traffic and Revenue Reports Should Continue.

The "No Special Concessions" rule should always remain in place after the removal of the ISP, irrespective of the threshold that is applied for lifting these rules. This important safeguard remains in place today when the ISP is removed, but does not apply to the terms and conditions on which traffic is settled or to the allocation of return traffic.[46] The rule thus gives full scope to the operation of market forces, while preventing discrimination regarding such matters as interconnection of international facilities, private line provisioning, maintenance and quality of service.[47]

The *ISP Reform Order* determined that this modified version of the "No Special Concessions" rule was necessary to address the "risk of anticompetitive conduct for arrangements with foreign carriers that possess market power, even on routes where we remove

---

45 To avoid continuing any "regulatory link between inbound and outbound traffic markets," *ISP Reform Order*, 14 FCC Rcd. 7963, ¶ 25, this proposed safeguard would apply only to U.S.-outbound traffic.

46 47 C.F.R. Sect. 63.14(c).

47 *ISP Reform Order*, 14 FCC Rcd. 7963, ¶¶ 84-86.

the ISP."[48] As described above, competition has progressed in the last three years, but even most benchmark-compliant routes remain controlled at the foreign end by monopolists or dominant carriers with large international market shares. Therefore, there is no basis for any different conclusion here.

Quarterly 43.61 traffic and revenue reporting should also continue irrespective of the threshold that is applied for lifting these rules.[49] These reports provide an important safeguard against competitive harm by allowing timelier monitoring of traffic volumes and associated revenues than annual 43.61 reports permit.[50] Further, as set forth below, to assist U.S. carriers in their negotiations for lower rates on all international routes, the Commission should publish each quarter a list of the routes with the lowest overall U.S.-outbound rates shown by these reports.

IV. ROUTES WITH ABOVE-BENCHMARK RATES SHOULD REMAIN SUBJECT TO THE ISP.

The continued potential harm to U.S. competition from high termination rates and foreign market power in countries with above-benchmark rates should preclude adoption of the alternative proposal set forth in the Notice (¶¶ 30-31) for the removal of the ISP from all U.S. international routes. The routes on which U.S. carriers must still negotiate benchmark rates are

---

48 *Id.*, ¶ 86.

49 47 C.F.R. Sect. 43.61 (b).

50 As described above, the filing requirements of Sections 43.51 and 64.1001 should be removed when the requirements of the ISP for nondiscriminatory rates, proportionate return and symmetrical settlement rates are removed and the Commission should use quarterly 43.61 reports for routine monitoring of these routes.

all to non-liberalized countries, and usually controlled at the foreign-end by government-owned monopoly carriers subject to no regulatory or marketplace restraint. Indeed, conditions in these markets have changed relatively little since the Commission last reviewed these issues in 1999.

The Commission then concluded that proposals to remove the ISP on all routes to WTO Member countries "would open U.S. carriers and consumers to potential abuse from foreign monopoly carriers," and accordingly "decline[d] to adopt them."[51] The Commission found (1) that many WTO Member countries "remain closed to competition," (2) that alternative termination methods "may not be a realistic alternative . . . for the termination of large amounts of traffic, particularly where termination of traffic in such a manner is illegal in the foreign country," and (3) that "in countries that have high settlement rates with U.S. carriers, the potential harm to U.S. consumers from one-way by-pass and/or whipsawing could be significant."[52] The Commission accordingly determined that "the risk from lifting the ISP is great, and is not outweighed by the potential pro-competitive effects of lifting the ISP on such routes."[53]

These remain significant concerns today. The general developments in the international marketplace that have increased "options for U.S. carriers to terminate traffic" since the *ISP Reform Order* (Notice, ¶ 23) have brought few changes on the routes where U.S. carriers must still pay above-benchmark rates. First, "increased privatization and liberalization"

---

[51] *ISP Reform Order*, 14 FCC Rcd. 7963, ¶ 63.

[52] *Id*.

[53] *Id*.

(id., ¶ 30) has had little effect in these countries, which are still closed to competition. Second, as described in Section I above, "opportunities to terminate bilateral traffic through multilateral mechanisms" (*id.*), are not available to all countries, are not capable of handling large U.S. traffic volumes, or do not provide sufficiently low rates. Third, above-benchmark rates continue to threaten harm to U.S. consumers, for the reasons previously described by the Commission.

Therefore, the Commission should continue to maintain the requirements of the ISP for nondiscriminatory rates, proportionate return and symmetrical settlement rates on routes where settlement rates remain above benchmarks. Compliance with these specific requirements of the ISP on above-benchmark routes is necessary to prevent competitive harm to the U.S. market from the abuse of above-benchmark rates, and also to limit the ability of monopoly foreign carriers on these routes to engage in whipsaw conduct to prevent U.S. carriers from lowering settlement rates to benchmark levels.

V. THE COMMISSION SHOULD ESTABLISH LOWER BENCHMARKS FOR ALL COUNTRIES.

Settlement rate benchmarks are the Commission's most successful international policy. Despite initial opposition by many foreign carriers and governments, benchmarks have met with near-universal compliance, and have produced huge U.S. consumer benefits. Even before the January 1, 2003 compliance date for the last group of benchmarks in the five-year transition period established by the *Benchmarks Order*, U.S. carriers had negotiated benchmark-compliant rates on more than three-quarters of U.S. international routes. (Notice, ¶ 32.) And as the International Bureau has found, "U.S. consumer calling prices for international services . . .

have fallen dramatically" as the result of the benchmarks policy.[54]

To ensure continued reductions toward cost, and to address the rapidly-escalating problem of high foreign mobile termination rates discussed in Section V below, the Commission should, subsequent to this proceeding, commence a further proceeding to establish new, lower benchmark rates based on current data. The Commission would also thus make clear to foreign carriers that continue to obstruct U.S. carrier negotiations or that seek rate increases, that it expects U.S. carriers to use commercial arrangements to make further progress in reducing rates below the existing benchmarks toward cost. Additionally, the Commission should decline to introduce any "sunset" for benchmarks, which would merely encourage non-compliance with benchmarks and backsliding.

1. <u>The Commission Should Revise Benchmarks Further Toward Cost.</u>

The existing benchmarks were established in 1997, based on data collected in 1995 and 1996, and should now be revised to reflect the lower switching and transmission costs and lower foreign market prices that have developed since that time. AT&T, for example, has filed a 2001 study with the Commission showing termination costs in Mexico below 4 cents.[55]

---

[54] *Atlantic Tele-network, Inc.*, IB Docket No. 96-261, Order, DA 01-2659 (rel. Nov. 16, 2001), ¶ 7.

[55] *See AT&T and Concert Objection to International Settlements Policy Modification Request for a Change in the Accounting Rate for International MessageTelephone Service with Mexico*, File No. ARC-MOD-20010530-00123 (filed Jun. 20, 2001), Att. A (Carrier-Tariff Component Pricing (CTCP) Study of Mexican Carrier Rates for U.S. Call Termination in Mexico, showing that Mexican carriers pay Telmex less than 4.5 cents per minute for the network elements and services required to terminate international calls from the United States) & Att. B ("Use of a more cost-based rate for off-net terminating interconnection in Mexico shows an adjusted CTCP for cross-border interconnection to be no more than 3.26 cents per minute.").

Unquestionably, benchmarks are now much further above cost than when they were originally adopted, and therefore play a less effective role in furthering the achievement of the Commission's goal of cost-based rates.

Indeed, these initial benchmarks were viewed by the Commission as an interim step to achieving cost-based rates. The Commission stated in the *Benchmarks Order* that it would "revise and update our benchmarks periodically as necessary" in order to "keep[] pace with cost reductions, and to encourage further movement toward cost-based settlement rates."[56] The Commission should now move its benchmarks closer to cost -- the longstanding public interest goal. As suggested by the Notice (*id.*), the Commission should begin a further proceeding to establish new benchmarks. The Commission would also thus signal that it expects rates to be lowered below existing benchmarks and thereby assist U.S. carriers to make meaningful progress in reducing rates through the commercial arrangements it seeks to encourage in this proceeding.

However, this proposed new proceeding should not be consolidated in the instant proceeding, and thus should not be allowed to delay the immediate safeguards requested above for routes where the ISP is otherwise removed. Cost-based benchmarks are unlikely to be established in a sufficiently timely manner to prevent the rate increases now threatened on a number of those routes. In any event, like the existing ISP prohibition on price increases, the continued safeguard against price increases should provide a separate restraint on the abuse of

---

[56] *Benchmarks Order*, 12 FCC Rcd. 19,806, ¶ 112 & App. E (Tariffed Components Price Methodology).

foreign market power on these routes, and therefore should be in place irrespective of whether the Commission also establishes new benchmarks.

To further assist achievement of the goal of cost-based rates, the Commission should make available information on the routes with the lowest overall U.S. carrier outbound rates, as shown by quarterly 43.61 reports.[57] This would provide current "best practice" international termination rates to guide foreign carriers and regulators and to assist U.S. carriers in their negotiations.

2. Benchmark Compliance Remains Necessary by All Countries.

For reasons similar to those requiring continued application of the ISP to non-benchmark compliant routes, the Commission should not adopt any "sunset date" for the benchmarks policy. (Notice, ¶ 44.) To do so would be to turn back after going only halfway forward. The benchmarks remain especially necessary to obtain lower rates in less developed, noncompetitive markets, and U.S. carriers are still negotiating with foreign carriers to achieve benchmark rates in a number of these markets. Moreover, as illustrated by the recent efforts by foreign carriers and governments to raise termination rates in various markets to recapture lost U.S. subsidies, termination rates in non-competitive countries may go up as well as down. Any prospect that benchmarks would be removed in the future would merely encourage further intransigence by countries that have not yet agreed to benchmark rates and may encourage new efforts to raise rates. However, the Commission should assist benchmark compliance by allowing U.S. carriers to demonstrate benchmark compliance by filing either a benchmark

---

[57] Such non-carrier specific information would not have any "chilling" effect on pro-

(Footnote continued on next page)

agreement or a notarized statement that it has entered into an arrangement for benchmark rates.

VI. THE COMMISSION SHOULD TAKE IMMEDIATE ACTION TO RESTRAIN RISING FOREIGN MOBILE TERMINATION RATES.

High foreign mobile termination rates harm U.S. consumers, and threaten to reverse much of the progress toward more cost-based rates -- including on some of the most competitive U.S.-international routes. This mushrooming problem is caused by the much higher termination rates frequently charged by mobile network operators, particularly in countries with "calling party pays" ("CPP") regulatory regimes, exacerbated by the rapid growth in the number of international calls terminating on mobile rather than fixed networks. Urgent Commission action is now necessary to address the adverse effects on U.S. consumers resulting from this abuse of market power by foreign mobile network operators.

Specifically, the Commission should: (1) confirm that the existing benchmarks apply to all traffic terminating on mobile networks, including traffic terminated directly with foreign mobile carriers, which should be added to the Commission's list of foreign carriers with market power; (2) confirm that the proposed prohibition on U.S. carriers accepting increased outbound rates equally applies to mobile termination rates; and (3) include benchmarks for traffic terminated on mobile networks in the further proceeding to establish new, lower benchmark rates requested above.

1. Mobile Termination Rates Greatly Exceed Fixed Termination Rates and Mobile International Traffic Volumes Are Rapidly Increasing.

With rare exceptions, the rates to terminate traffic on a foreign mobile network

---

(Footnote continued from previous page)

competitive arrangements.

are far higher than the rates to terminate traffic on a fixed network in the same foreign market. The adverse impact on U.S. consumers is particularly well illustrated by the high mobile rates charged in otherwise competitive countries. The pricing gap is often extreme -- mobile termination rates in these countries are as much as *fifteen times* more expensive than fixed termination.[58] Thus, mobile calls account for only about 30 percent of Western European countries' incoming international traffic, but represent 80 percent of their total cost of terminating all international traffic.[59]

These high mobile termination rates are clearly above cost. Even if generous assumptions are made about the costs of mobile technology, infrastructure, and any absence of economy of scale efficiencies, there is no legitimate justification for the difference between fixed and mobile termination rates.[60] Studies have concluded that mobile termination prices in Europe exceed cost by 40-70 percent.[61] Indeed, mobile termination rates are above the applicable Commission benchmark settlement rate in no fewer than 40 countries -- 23 upper-income countries, 13 middle-income countries, and 4 lower-income countries. Although the overall

---

58 *INTUG, Termination of International Calls to Mobile Networks, Submission by INTUG to ITU-T SG3*, (June 2002), at 3-7 (citing Arbinet April 2002 data showing mobile international termination rates exceeding fixed network termination rates on fixed networks in Netherlands by 1428.8 percent, Sweden by1344.4 percent, Australia by 794.1 percent, Japan by 470.2 percent, and Chile by 424.0 percent). S*ee also, TeleGeography 2002,* International Traffic to and from Mobile Phones. ("Terminating traffic on mobile networks is almost universally more expensive than terminating traffic on fixed networks.")

59 *Id.*.

60 *See* Ovum, *Mobile Termination Rates*, at 14-16 (2000).

61 *Id*. at 16 ("Typical mobile termination prices in Europe are around 50 percent higher than truly cost-oriented rates.") *See also, id.* (citing ECTA findings of 40-70 percent mark-up over actual cost levels).

blended outbound rate for all U.S. international services may still be below benchmark in these countries because of their much lower termination rates for fixed network traffic, these overall or blended outbound rates are also increasing as the blend of total U.S. international traffic on these routes shifts more heavily to mobile termination.

The increasing volume of international traffic terminated on foreign mobile networks exacerbates the adverse effect of these unreasonably high termination rates. Globally, mobile subscribership and traffic are increasing at a very rapid rate. Annual global growth in mobile subscribers is estimated at more than 50 percent in recent years, and annual global growth in mobile traffic is estimated at almost 70 percent.[62] The ITU expects the number of worldwide mobile subscribers to surpass the number of fixed line subscribers by 2003.[63]

As a result, the percentage of international traffic terminating on mobile phones is also growing, and *TeleGeography* estimates that over twenty percent of the world's total incoming international traffic is now terminated in this way.[64] Similarly, AT&T estimates that for 2003 mobile terminating traffic will account for 20-25 percent of its total U.S.-outbound international traffic. The rapid growth in U.S. international traffic requiring high cost mobile termination is rapidly

---

62 *TeleGeography 2002, International Traffic To and From Mobile Phones*. S*ee also*, *Global Mobile Users Hit 1 Billion Mark*, Total Telecom (Nov. 6, 2002) (Baskerville Group's Global Mobile Subscriber Database estimated June 2002 year-on-year global subscriber growth at 22.23 percent).

63 *TeleGeography 2002, International Traffic To and From Mobile Phones*.

64 *Id.*

increasing U.S. carriers' termination payments to foreign carriers -- and threatens to undermine much of the progress made in reducing those payments in recent years.

2. Commission Action is Necessary to Address This Abuse of Market Power by Foreign Mobile Operators.

Foreign mobile termination rates require Commission action because market forces will not reduce these rates in CPP countries -- which include the vast majority of countries outside North America. With CPP, the person who initiates the call to the mobile phone pays the mobile operator for the mobile termination, while the called party, who is a customer of the mobile operator, is not charged for the termination. Because the consumer who subscribes to the mobile operator is not the same consumer who pays the mobile operator for call termination, there is no marketplace constraint on the mobile operator to reduce termination charges.[65]

As described by the International Telecommunications Users Group ("INTUG"), "[t]here seems to have been no commercial success in driving down termination prices to mobile networks."[66] Moreover, as INTUG further explained, "[r]egulatory action in this area has been

---

[65] There is no effective demand-side substitute for the calling party or the called party, because the potential substitutes (e.g., placing calls to fixed rather than mobile lines, sending short text messages rather than voice calls, or utilizing call-back services) would undermine the quality and convenience factors that create demand in the broader mobile market. There also is no effective supply-side substitute, which would require a competing operator to have access to the details of the end user's SIM card, and the mobile operator can simply refuse to share this information with other operators.

[66] *INTUG, Termination of International Calls to Mobile Networks, Submission by INTUG to ITU-T SG3*, (June 2002), at 2.

limited. The biggest change has been that individual mobile networks have built defensive walls of high termination prices, initially for domestic and later for international calls."[67]

Mobile network operators in CPP countries, therefore, have market power in the market for call termination on their own networks.[68] Where the foreign mobile operator abuses this market power, thus demonstrating that market forces cannot adequately discipline mobile international termination rates, Commission action is required to encourage low rates for U.S. consumers, just as Commission action was required in 1997 to reduce the unreasonably high settlement rates for termination on foreign carriers' wireline networks. The Commission then found it could not "rely entirely on the market to reduce settlement rates on a timely basis to a more cost-based level," and the same situation applies here.[69] For similar reasons, the Commission has recently required fixed line CLECs' terminating access rates in the U.S. domestic market to comply with benchmarks.[70]

AT&T urges the Commission to take the following steps to address above-cost foreign mobile termination rates. First, the Commission should add foreign mobile carriers to its

---

67 *Id.*

68 Similarly, the European Commission has recommended that the market for "call termination on individual mobile networks" should be treated as a relevant market susceptible to *ex ante* regulation. *Public Consultation on the Draft Commission Recommendation on Relevant Product and Service Markets within the Commission Recommendation on Relevant Product and Service Markets within the Electronic Communications Sector*, EU Commission, Jun. 17, 2002.

69 *Benchmarks Order*, 12 FCC Rcd 19,806, ¶ 39.

70 *See Access Charge Reform*, 16 FCC Rcd. 9923 at ¶ 32 (2001) ("the market for access services does not appear to be structured in a manner that allows competition to discipline rates").

list of foreign carriers with market power and apply existing benchmark rates to all mobile terminating traffic, regardless of whether the traffic terminates directly with foreign mobile carriers, or whether it is sent to a foreign dominant wireline carrier for onward termination on a mobile operator's network. Thus, any U.S. carrier unable to negotiate a rate for the termination of traffic on mobile networks at or below the relevant benchmark on a U.S. international route should be able to request enforcement measures to require the payment of benchmark rates.[71]

Second, as AT&T proposed above, the Commission should continue ISP prohibitions on unjustified price increases following the removal of the ISP on benchmark-compliant routes and, where requested to do so by a U.S. carrier, should prohibit the payment of an increased rate for any outbound service, including outbound calls terminated on foreign mobile networks.

[71] *Benchmarks Order*, 12 FCC Rcd 19,806, ¶ 186.

Beyond these immediate steps in this proceeding, the Commission should use the new benchmarks proceeding requested above to establish new benchmark rates for international mobile termination.

Respectfully submitted,

AT&T CORP.

By /s/ James J. R. Talbot

Mark C. Rosenblum
Lawrence J. Lafaro
James J. R. Talbot

One AT&T Way
Bedminster, New Jersey 07921
(908) 532-1847

Dated: January 14, 2003

CERTIFICATE OF SERVICE

I, Karen Kotula, do hereby certify that on this 14th day of January 2003, a copy of the foregoing "Comments of AT&T Corp." was served by hand delivery, upon the parties listed below:

James Ball
Chief, Policy Division
International Bureau
445 12th Street, SW
Washington, DC 20554

Lisa Choi
Senior Legal Advisor
Policy Division, International Bureau
445 12th Street, SW
Washington, DC 20554

Gardner Foster
Attorney, Policy Division
International Bureau
445 12th Street, SW
Washington, DC 20554

Qualex International
445 12th Street, S.W.
Room CY-B402
Washington, DC 20554

/s/ Karen Kotula
Karen Kotula